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10 Attorneys for Defendants,

SPARTACUS 20TH L.P.;

11 SPARTACUS 20TH G.P., INC.;

PHILIP R. PALUMBO;

12 JAKOB IRION;

BODYROK FRANCHISE, L.P.;

13 BODYROK FRANCHISE G.P., INC.;

EXERCISE TECHNOLOGIES, L.P.;

14 BODYROK MARINA, L.P.;

SCULPT FITNESS BERKELEY, LLC;

15 SPARTACUS LOMBARD, L.P.

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO

18 LAGREE TECHNOLOGIES, INC., LAGREE
FITNESS, INC., MAXIMUM FITNESS
19 INCORPORATED, and SEBASTIEN LAGREE,

20 Plaintiffs,

21 vs.

22 SPARTACUS 20TH LP., SPARTACUS 20TH
G.P., INC., PHILIP R. PALUMBO, JAKOB
23 IRION, BODYROK FRANCHISE, L.P.,
BODYROK FRANCHISE G.P., INC., EXERCISE
24 TECHNOLOGIES, L.P., BODYROK MARINA,
L.P., SCULPT FITNESS BERKELEY, LLC and
25 DOES 1 through 10, inclusive,

26 Defendants.

) CASE NO. 3:17-cv-00795-JST

)

) **PARTIES' STIPULATION TO**
) **EXTEND TIME FOR DEFENDANTS**

) **TO FILE ADMINISTRATIVE**

) **MOTION FOR LEAVE OF COURT**

) **TO FILE A SUR-REPLY TO**

) **MOTION TO DISMISS**

) **PLAINTIFFS' PATENT**

) **INFRINGEMENT CLAIMS AND**

) **RELATED COUNTERCLAIMS**

) **PURSUANT TO FED.R. CIV. 41(a)(2)**

) **AND 12(b)(1);**

)

) **AND ~~[PROPOSED]~~ ORDER**

)

) **Courtroom: 9**

) **Judge: Jon S. Tigar**

)

)

)

SPARTACUS 20TH LP., SPARTACUS 20TH
G.P., INC., PHILIP R. PALUMBO, JAKOB
IRION, BODYROK FRANCHISE, L.P.,
BODYROK FRANCHISE G.P., INC., EXERCISE
TECHNOLOGIES, L.P., BODYROK MARINA,
L.P., SCULPT FITNESS BERKELEY, LLC, and
SPARTACUS LOMBARD, L.P.

Counter-Plaintiffs,

vs.

LAGREE TECHNOLOGIES, INC., LAGREE
FITNESS, INC., MAXIMUM FITNESS
INCORPORATED, and SEBASTIEN LAGREE,
and SPX FITNESS, INC., and ROES 1 through 10,
inclusive,

Counter-Defendants.

1 TO THE HONORABLE JON S. TIGAR AND THE CLERK OF THE COURT:

2 Pursuant to Rule 6-1(b) of the Civil Local Rules (L.R.), Plaintiffs and Counter-
3 Defendants LAGREE TECHNOLOGIES, INC., LAGREE FITNESS, INC., MAXIMUM
4 FITNESS INCORPORATED, SEBASTIEN LAGREE, and SPX FITNESS, INC. ("Plaintiffs"),
5 and Defendants and Counter-Plaintiffs SPARTACUS 20TH L.P., SPARTACUS 20TH G.P.,
6 INC., PHILIP P. PALUMBO, JAKOB IRION, BODYROK FRANCHISE, L.P., BODYROK
7 FRANCHISE G.P., INC., EXERCISE TECHNOLOGIES, L.P., BODYROK MARINA, L.P.,
8 SCULPT FITNESS BERKELEY, LLC, and SPARTACUS LOMBARD, L.P. ("Defendants")
9 (hereinafter collectively the "Parties"), stipulate as follows:

10 WHEREAS, Defendants intend to file a motion for administrative relief pursuant to
11 Local Rule 7-11, requesting leave to file a sur-reply in response to Plaintiffs' Motion to Dismiss
12 Plaintiffs' Patent Infringement Claims and Related Counterclaims Pursuant to Fed. R. Civ. P.
13 41(a)(2) and 12(b)(1) (Dkt. No. 79) ("Motion to Dismiss") and Plaintiffs' Reply (Dkt No. 104)
14 which contained a declaration and Exhibit, namely a covenant not to sue signed on September 8,
15 2017 (Dkt No. 104-1).

16 WHEREAS, counsel for the Parties have met and conferred in an attempt to reach an
17 agreement on the terms of a potential stipulated dismissal.

18 WHEREAS, the parties wish to continue meeting and conferring regarding the terms of a
19 potential stipulated dismissal.

20 WHEREAS, on September 8, 2017, the Court continued the hearing on the Motion to
21 Dismiss to November 2, 2017 (Dkt. No. 103).

22 WHEREAS, based on the foregoing, the Parties met and conferred and stipulated to a
23 one-week extension of time for Defendants to file their motion for administrative relief for leave
24 to file a sur-reply, up to and including September 22, 2107, which would give the Parties
25 sufficient time to discuss mutually-agreeable terms to a stipulated dismissal.

26 WHEREAS, the Parties have stipulated to three previous time modifications for Plaintiffs
27 to file their reply to the Motion to Dismiss (Dkt. Nos. 85, 96 and 99).

28 WHEREAS, Plaintiffs were also granted one additional modification for Plaintiffs to file

1 their reply to the Motion to Dismiss (Dkt. No. 94).

2 WHEREAS, the Parties have stipulated to four previous time modifications in connection
3 with responses to the Parties' respective pleadings on April 11, 2017 (Dkt. No. 35) and May 18,
4 2017 (Dkt. No. 51), June 14, 2017 (Dkt. No. 68), and July 20, 2017 (Dkt. 82).

5 WHEREAS, this stipulation will not alter the date of any event or any deadline already
6 fixed by the Court order, and could resolve one of the issues before the Court's November 2,
7 2017 hearing.

8 NOW, THEREFORE, the Parties, by and through their respective counsel, hereby
9 stipulate and agree that Defendants' motion for administrative relief to file a sur-reply to the
10 Motion to Dismiss shall be filed no later than September 22, 2017.

11
12 DATED: September 15, 2017

GORDON REES SCULLY MANSUKHANI, LLP

13
14 By: /s/ Robert P. Andris
15 Robert P. Andris
16 Michael D. Kanach
17 Attorneys for Defendants,
18 SPARTACUS 20TH LP. ;
19 SPARTACUS 20TH G.P., INC.;
20 PHILIP R. PALUMBO;
21 JAKOB IRION;
22 BODYROK FRANCHISE, L.P.;
23 BODYROK FRANCHISE G.P., INC.;
24 EXERCISE TECHNOLOGIES, L.P.;
25 BODYROK MARINA, L.P.;
26 SCULPT FITNESS BERKELEY, LLC;
27 SPARTACUS LOMBARD, L.P.

28
DATED: September 15, 2017

NEUSTEL LAW OFFICES, LTD

By: /s/ Chad E. Ziegler
Chad E. Ziegler (*Pro Hac Vice*)
Edward K. Runyan (*Pro Hac Vice*)
Michelle G. Breit
Attorneys for Plaintiffs,
LAGREE TECHNOLOGIES, INC.;
LAGREE FITNESS, INC.;
MAXIMUM FITNESS INCORPORATED;
SEBASTIEN LAGREE;
SPX FITNESS, INC.

PURSUANT TO STIPULATION, IT IS SO ORDERED.



DATED: September 20, 2017

UNITED STATES DISTRICT JUDGE
Honorable Jon S. Tigar